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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN VAUGHN ANTHONY,

Defendant and Appellant.

E062876

(Super.Ct.No. FVI08164)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal, Collette Cavalier and Allison V. Hawley, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant appeals from the trial court's partial denial of his Proposition 47 petition for resentencing, specifically regarding his conviction for unlawfully driving or taking a vehicle, Vehicle Code section 10851. For the reasons discussed below, we affirm the court's ruling.

### **FACTS AND PROCEDURE<sup>1</sup>**

On May 22, 1998, defendant burglarized a home and unlawfully drove or took a Toyota vehicle without the owners' consent. On May 25, 1998, defendant burglarized a cigarette store.

On May 27, 1998, the People filed a complaint charging defendant with first degree residential burglary (Pen. Code, § 459; count 1);<sup>2</sup> unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a); count 2); second degree commercial burglary (§ 459; count 3); and petty theft with a prior (§ 666; count 4). The People alleged defendant had two prior strike convictions, for robbery (§ 211) and burglary (§ 459). (§§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d).)

On August 10, 2000, a jury convicted defendant of all counts.

On October 11, 2000, the trial court found true the allegations that defendant had two prior strike convictions.

On April 11, 2001, the trial court sentenced defendant to 50 years to life as

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<sup>1</sup> In an order filed June 25, 2015, the court took judicial notice of its opinion in E029408, filed May 31, 2002.

<sup>2</sup> All section references are to the Penal Code unless otherwise indicated.

follows: consecutive terms of 25 years to life on counts one and three, and concurrent terms of 25 years to life on counts two and four. The court stayed the sentence on count four pursuant to section 654.

On November 4, 2014, voters enacted Proposition 47, and it went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) “Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Id.* at p. 1092.)

On December 8, 2014, the superior court received a petition from defendant asking for his felony convictions to be reduced to misdemeanors under section 1170.18. On January 9, 2015, the court granted the petition as to counts three and four, denied it as to counts one and two, and resentenced defendant to 25 years to life.

This appeal followed.

## **DISCUSSION**

Defendant contends that the trial court erred by ruling that section 1170.18 does not apply to a conviction under Vehicle Code section 10851, subdivision (a). The court’s

actual ruling on the matter was “It appears Mr. Anthony is eligible for Prop. 47 relief on one burglary count and one petty theft with a prior count, but not eligible on the other burglary count and the 10851 charge.”

In response, the People contend (among other things) that, even assuming section 1170.18 does apply to a conviction under Vehicle Code section 10851, subdivision (a), defendant did not show that the value of the vehicle was \$950 or less so as to make him eligible for resentencing. We find this contention dispositive.

As stated above, Proposition 47 reduced certain theft-related offenses — provided they involve property worth \$950 or less — as well as certain possessory drug offenses from felonies (or wobblers) to misdemeanors, unless the defendant has a disqualifying prior conviction. (Couzens & Bigelow, Proposition 47: “The Safe Neighborhoods and Schools Act” (Feb. 2016 rev. ed.) pp. 24-28 (Couzens & Bigelow), available at <<http://www.courts.ca.gov/documents/Prop-47-Information.pdf>>, as of Mar. 28, 2016.)

Also as stated above, Proposition 47 allows persons previously convicted of one of the specified offenses as a felony to petition to reduce the conviction to a misdemeanor. Specifically, it enacted Penal Code section 1170.18, which, as relevant here, provides:

“(a) A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (‘this act’) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350,

11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.

“(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner’s felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, those sections have been amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.”

“The statute itself is silent as to who has the burden of establishing whether a petitioner is eligible for resentencing. However, Evidence Code section 500 provides, ‘[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.’ Because defendant is the petitioner seeking relief, and because Proposition 47 does not provide otherwise, ‘a petitioner for resentencing under Proposition 47 must establish his or her eligibility for such resentencing.’ [Citations.] In a successful petition, the offender must set out a case for eligibility, stating and in some cases showing the offense of conviction has been reclassified as a misdemeanor and, where the offense of conviction is a theft crime reclassified based on the value of stolen property, showing the value of the property did not exceed \$950. [Citations.] The defendant must attach

information or evidence necessary to enable the court to determine eligibility.

[Citation.]” (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136-137.)

Defendant did not meet his burden in this case. He did not allege or provide any information about the value of the car in his petition for resentencing. As a result, the superior court could not “determine whether the petitioner satisfies the criteria in subdivision (a).” (§ 1170.18, subd. (b).) Defendant did not meet his burden of alleging a prima facie case of eligibility for resentencing.

“Our conclusion that defendant must provide some evidence of eligibility when he files the petition is supported by the language and structure of the statute. Section 1170.18, subdivision (a) permits offenders currently serving sentences for reclassified offenses to ‘petition for a recall of sentence’ and ‘request resentencing.’ ‘The statute does not expressly require the trial court to hold a hearing before considering the eligibility criteria, nor is there a reference to the taking of “evidence” or other proceeding that would compel involvement by the parties. The statute simply states: “Upon receiving a petition for recall of sentence under this section, the court shall determine whether the petitioner satisfies the [eligibility] criteria.” [Citation.]’ [Citation.] Thus, the statute appears to assume most petitions can be resolved based on the filings. We read the statute to fairly imply that in the normal case the superior court will rule on the basis of the petition and any supporting documentation.” (*People v. Perkins, supra*, 244 Cal.App.4th at p. 137.)

Thus, “[t]he superior court ‘will be able to summarily deny relief based on any petition that is facially deficient. Resentencing may be denied based solely on the fact of a prior conviction of a designated “super strike” or any offense requiring registration as a sex offender under section 290(c).’ [Citation.] In many cases, a petition will be deficient because the offender seeks resentencing for a crime that has not been reclassified as a misdemeanor. [Citation.] In other cases, the superior court may be able to determine whether a petitioner is eligible for resentencing simply by consulting the record of conviction or evidence submitted by the parties.” (*People v. Perkins, supra*, 244 Cal.App.4th at p. 138.)

It appears probable from the record that that the trial court denied the petition, not because the petition failed to establish the value of the property, but because the court deemed Proposition 47 inapplicable to a conviction under Vehicle Code section 10851, subdivision (a). Nevertheless, we may affirm its ruling on the former ground. “[T]he task of an appellate court is to ‘review the correctness of the challenged ruling, not of the analysis used to reach it.’ [Citation.] ““‘If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.’ [Citation.]” [Citation.]” (*People v. Hughes* (2012) 202 Cal.App.4th 1473, 1481.)

#### **DISPOSITION**

We affirm the order denying defendant’s petition for resentencing on his conviction for unlawfully driving or taking a vehicle under Vehicle Code section 10851.

However, we affirm the order without prejudice to consideration of a subsequent petition that supplies evidence of his eligibility, in keeping with our reasoning in *People v.*

*Perkins, supra*, 244 Cal.App.4th at pages 139-140.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

McKINSTER

J.